



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

**TESTIMONY PRESENTED BEFORE THE GOVERNMENT ADMINISTRATION AND
ELECTIONS COMMITTEE**

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Chairpersons Slossberg and Spallone, Ranking members McLachlan and Hetherington, and distinguished members of the committee, thank you for the opportunity to present testimony today.

The Commission is strongly opposed to **Section 10 of House Bill 6440, *An Act Concerning Certain Revisions to Elections Related Statutes***, which would effectively repeal accountability procedures in the absentee balloting process enacted in PA 05-235, which was adopted by a near unanimous vote in both chambers. These procedures were developed in collaboration by the Town Clerks' Association, ROVAC, the Secretary of the State and the SEEC after a year long study, and a successful pilot program conducted in 2003. We strenuously oppose repeal of the provisions.

Undue influence and fraud in the absentee ballot process have been well documented. A sitting legislator lost his seat as a result of it, and many others were investigated by the SEEC and penalized thousands of dollars for interfering with the privacy rights of those who vote by absentee ballots. Yet, despite these abuses, there were many more that could not be successfully ferreted out because the SEEC lacked a sufficient paper trail. Our investigations had shown that in most instances those who committed abuses had contact with the voter at the onset of the process--distribution of the applications. Since the victims of these abuses were mainly elderly, disabled and non English speaking, they were either afraid to, or had difficulty recollecting those who had visited them. The procedures utilized in the pilot program and incorporated into the law provided such a paper trail. Those who need absentee ballots received them, and the accountability in the distribution has resulted in no documented abuse. The provisions of section 10 of this bill ignore the harsh realities of the past and, in effect, weaken the zone of privacy that the absentee voter now enjoys. Why throw the baby out with the bath water? We need to continue to ensure the integrity of the voting process not weaken it. If we go down this path, the public's confidence in our voting process, the foundation of our democracy, will surely erode. This was not just a big city problem. Before enactment of these procedures, we heard evidence from towns of all size, from Winsted to West Haven, that such abuses were a major problem. The Mayor of West Haven was among those who testified at the GAE Committee and asked to be part of the pilot program we conducted in 2003. Without the accountability procedures in current law, claims of abuse will surely increase, thus resulting in the need for additional investigators for the SEEC. We urge you not to go down this path.

The primary focus of the balance of the Commission's testimony is in response to some of the difficulties that our agency is experiencing with enforcement following the move to the new optical scan voting machines from the old lever voting machines. Although the Commission has its own proposal, which has not yet come up for a hearing, similar proposals are before you today that address the shift in voting systems, and the Commission supports *some* of the concepts in **House Bill 6441, *An Act Concerning Confidence in the Connecticut Election System*** and **House Bill 6440, *An Act Concerning Certain Revisions to Elections Related Statutes***, however, the Commission prefers its own draft of an amendment to its own enabling statute. The Commission also prefers to limit its enforcement authority to laws or regulations, which have been vetted through the legislative process and have the force and effect of law, as opposed to directives that are not grounded in statute. The regulated community has an opportunity, like today, to comment on legislative proposals and regulations, and as a matter of fairness, is entitled to notice of what the law requires of them. The bills before you today propose a great expansion of the Commission's authority, as opposed to the Commission's bill, which simply seeks to retain authority that it had under the lever voting machine system. If there is an area where the General Assembly intends to delegate authority to the Secretary of the State and it wants her to prescribe the details of the process and make it enforceable, that can be accomplished with language, for example: The procedure for conducting audits shall be prescribed by the Secretary of the State, and each municipal official shall comply with the process outlined by the Secretary of the State for conducting audits.

There are some technical drafting issues that the Commission would be happy to work with the committee and the Secretary of the State on, as well as some logistical timing issues on the audits, which have two different versions in the two bills, neither of which works properly. Presently, the audits occur after the 14 day lockout period, in part because that is the period of time during which a recanvass could be ordered or an election contest could be filed in Superior Court. Similarly the different goals of a recanvass versus an audit need to be examined in the context of these proposals: A recanvass attempts to determine who won the election; an audit examines how well the machine performed. Section 8 (e) of HB 6441 should be stricken. In terms of how it redefines a "ballot not properly marked:" The machine should read a 50% marked oval on the ballot, but it is not programmed to and should not pick up a mark outside of an oval. This section should not be changed. Furthermore, while the audits are being reexamined, a requirement should be put into law mandating segregation of ballots by tabulator, otherwise, it is impossible to audit how the machine performed. The ballots must stay with their tabulator for purposes of the audit if the audits are to be effective. In some ways, the bill does not go far enough in providing the level of detail necessary with respect to the conduct of the audits: In the absence of a uniform process, they will be conducted 169 different ways.

The Commission has some drafting concerns with HB 6441, changing the definition of "election" to include primary and referenda has consequences throughout Title 9, and we are unclear of the motivation for the change. While well intentioned, Section 3 of HB 6441 would be ineffective because placed in a paper ballot section that does not apply to the optical scan tabulators.

In section 10 of HB 6441, and Section 39 of HB 6440, the Commission supports an amendment to Conn. Gen. Stat. § 9-236 to permit the Secretary of the State's field teams to monitor polling places, but thinks the Secretary him or herself should not be permitted in a polling place when he or she is a candidate on the ballot. There was a similar proposal, and we proposed a similar amendment last year.

In HB 6440, the Commission supports Section 8, changing "prompt" to within 60 days after an election with respect to the requirement that Registrars of Voters update voter history promptly after an election. The Commission recently had a case where the voter histories were not updated eight months after an election and found that "not prompt," but a bright line is easier to administer and enforce.

The prior lever voting machine system was codified in great detail in state statutes, with very specific procedures. Under the old system, the Commission had significant enforcement authority, because when there was a deviation from procedure, it typically amounted to a statutory violation. The Commission has the ability to investigate any alleged violation of a general statute pertaining to an election, primary or referenda pursuant to Conn. Gen. Stat. § 9-7b, and this allowed us to hold accountable many actors who made critical errors in the administration of elections.

The systems governing the new voting machines, however, are largely codified in regulation, which raises a substantial question regarding enforcement. Regulations have the force and effect of law, but it is not clear that the Commission has the authority to enforce the regulations of another agency, the Secretary of the State. The Commission believes that the Secretary of State's regulations should be enforceable, and that there ought to be consequences to failing to follow proper election procedures. A glaring example of the omission in our authority concerns the custody and control of ballots. Presently the requirements concerning ballot security are not addressed anywhere in statute, but are addressed in regulation only. With our new system, the security of ballots is of paramount concern, because if the ballots are not there, they cannot be recanvassed, nor can the machine properly be audited. Having the written ballot to rely on for back up is a touted feature of our new system, but we must provide an enforceable means to secure the ballots themselves.

The Commission also encourages you to consider a global revision to the election administration statutes to address the new voting system, and supports **Senate Bill 909, *An Act Concerning Technical Changes to the Election Laws***. The original regulations on optical scan machines were passed many years ago, when the principal voting machine used was the lever machine, and not when the system was contemplated as a complete replacement for the lever machines. There are vestiges of the lever voting machines left throughout the election statutes, and we are finding in cases that it is presenting difficulties in enforcement. At a minimum, existing statutes should not be *inconsistent* with the regulations governing the optical scan voting machines. We notice some gaps and sections in the draft that should be included in a comprehensive revision, such as Conn. Gen. Stat. § 9-243, and would be happy to work with the committee and the Secretary of the State to come up with the most comprehensive legislation. Another overarching concern is that the AVS system implemented with federal HAVA money is not codified in either statute or regulation, yet is the system we presently use to be HAVA compliant. It would seem logical to address this omission in these comprehensive proposals.

The Commission supports **Senate Bill 910, *An Act Concerning Permanent Absentee Ballot Status***, as it has sufficient safeguards. With respect to **House Bill 6435, *An Act Concerning Election Day Registration***, there are newer versions of this bill that provided for better safeguards to protect the integrity of the election process.

The Commission is supportive of training for Registrars of Voters, but wonders if that is being accomplished in **Senate Bill 917, *An Act Concerning the Training of Registrars of Voters***. A careful review shows the proposed language going from the required "shall" to the permissive "may."

In **SJ 42, *Resolution Amending the State Constitution to Allow Early Voting***, the Commission notes that different sections of the Constitution should be amended to accomplish the stated goal of the amendment, Art. III, Sec. 8 and Art. IV, Sec. 1, as amended by Art. I of the Amendments to the Constitution of the State of Connecticut. Such sections would also need to be amended to implement **House Bill 5012, *An Act Implementing Early Voting in Connecticut***, which as drafted provides for no excuse absentee voting, as opposed to early voting. As to the substance of the early voting proposals, the Commission will work with the committee to accomplish the goal of providing more convenience and accessibility for voters while maintaining the security of polling place protections. Due to its significant history of enforcement actions in the absentee ballot area, which lack the traditional controls of a polling place, the Commission opposes **SJ 43, *Resolution Proposing an Amendment to the State Constitution Concerning Voting by Absentee Ballot***.

With respect to **House Bill 5825, *An Act Establishing a No-Fault Provisional Ballot Law***, the Commission supports a unitary system for state, federal and municipal elections, and believes the provisional ballot could extend and replace the challenge ballot. It would be easier for election officials and the electorate to understand a simpler system with the same rules for state and federal as well as municipal elections. However, the identification requirement in this bill as drafted may be problematic under federal law: Those who claim eligibility to vote under the Help America Vote Act, and are required to but cannot provide identification, are eligible for a provisional ballot under federal law. This draft requires identification for a provisional ballot, and may need to be changed to comply with HAVA.

Thank you for your consideration of the Commission's views on these bills, I would be happy to answer any questions that you may have.